

324(4), and 54 of BNS, 2023.

2. The notice was issued to the respondent State of Gujarat. The Ld. Public Prosecutor has appeared before the court. The investigating officer has submitted his affidavit against the present bail application vide Exh. 4.

Submission on behalf of Applicant-accused.

3. Heard the Ld. Adv. for the accused-applicant. He contended that there is no prima facie case against accused to book him in this case. He further contended that the accused has been falsely implicated in this case and he is totally innocent. He further contended that the presence of accused would be easily available at the time of trial. He further contended that the accused-applicant is ready to comply any conditions that may be imposed by your Honour court. Hence, prayed for allowing the application.

Submission on behalf of State.

4. Heard the Ld. APP. He submitted that the offence is serious one and the and the role of the accused is there. Hence, the application should be rejected since the alleged offence is serious.

Position of law governing bail.

5. It has been observed by the Hon'ble Supreme Court in "Ram Govind Upadhyay v. Sudarshan Singh" reported in AIR 2002 SUPREME COURT 1475 in para-3 and 4 as under;

“While placement of the accused in the society, though may be considered but that by itself cannot be a guiding factor in the matter of grant of bail and the same should and ought always be

coupled with other circumstances warranting the grant of bail. The nature of the offence is one of the basic consideration for grant of bail - More heinous is a crime, the greater is the chance of rejection of the bail, though, however dependent on the factual matrix of the matter. Some of the other relevant considerations are :-

(a) While granting bail the Court has to keep in mind not only the nature of the accusations, but the severity of the punishment, if the accusation entails a conviction and the nature of evidence in support of the accusations.

(b) Reasonable apprehensions of the witnesses being tampered with or the apprehension of there being a threat for the complainant should also weigh with the Court in the matter of grant of bail.

(c) While it is not accepted to have the entire evidence establishing the guilt of the accused beyond reasonable doubt but there ought always to be a prima facie satisfaction of the Court in support of the charge.

(d) Frivolity in prosecution should always be considered and it is only the element of genuineness that shall have to be considered in the matter of grant of bail and in the event of there being some doubt as to the genuineness of the prosecution, in the normal course of events, the accused is entitled to an order of bail”.

6. The Hon'ble Apex Court has observed in "Sanjay Chandra Vs. C.B.I" reported in AIR 2012 S.C page no-830 in para-14 of its judgment as under;

"In bail application, generally, it has been laid down from the earliest times that the object of bail is to secure the appearance of the accused person at his trial by reasonable amount of bail". And Hon'ble Apex court has reaffirmed, reiterated and reinforced the principle that "grant of bail is rule and refusal to

bail is an exception' in the said judgment".

7. The Hon'ble Supreme Court in "Dataram Singh vs. State of U.P" 2018 (3) SCC 22 has held in para-2, 4 and 6 as under;

2. There is no doubt that the grant or denial of bail is entirely the discretion of the judge considering a case but even so, the exercise of judicial discretion has been circumscribed by a large number of decisions rendered by this Court and by every High Court in the country. Yet, occasionally there is a necessity to introspect whether denying bail to an accused person is the right thing to do on the facts and in the circumstances of a case.

4. To put it shortly, a humane attitude is required to be adopted by a judge, while dealing with an application for remanding a suspect or an accused person to police custody or judicial custody. There are several reasons for this including maintaining the dignity of an accused person, howsoever poor that person might be, the requirements of Article 21 of the Constitution and the fact that there is enormous overcrowding in prisons, leading to social and other problems as noticed by this Court in Inhuman Conditions in 1382 Prisons, In re [Inhuman Conditions in 1382 Prisons, In re, (2017) 10 SCC 658 : (2018) 1 SCC (Cri) 90] .

6. However, we should not be understood to mean that bail should be granted in every case. The grant or refusal of bail is entirely within the discretion of the judge hearing the matter and though that discretion is unfettered, it must be exercised judiciously and in a humane manner and compassionately. Also, conditions for the grant of bail ought not to be so strict as to be incapable of compliance, thereby making the grant of bail illusory.

Analysis.

8. Looking to the FIR it appears that it is alleged therein that

on 14.02.2026 at around 13:00 to 13:30 there was altercation and affray taking place so that the deceased son of the de facto complainant was capturing such incident in his mobile phone and at that time accused Dilipbhai has taken his mobile and destroyed it and accused applicant herein and Mr. Dilipbhai and Bhavesh had beaten deceased so that the deceased committed the suicide and thereby they have committed the alleged offences. The FIR came to be lodged on 07.03.2026 that is after 21 days of suicide by deceased. The charges leveled against the accused under Section 115(2) and 324(4) of BNS, 2023 are non-cognizable and bailable offences. So far as to offence under Section 108 of BNS, 2023 is concerned, even if what is alleged in the FIR is presumed to be true then also it does not make out prima facie case against the accused. There is total absence of any *mens rea* on the part of the accused to make an abetment of suicide by the deceased and even the accused and the deceased they are unknown to each other prior to alleged incident taken place on 14.02.2026.

9. The Hon'ble Supreme Court in the case of Mahendra Awase v. State of M.P. reported in (2025) 4 SCC 801 has held as under;

19. As has been held hereinabove, to satisfy the requirement of instigation the accused by his act or omission or by a continued course of conduct should have created such circumstances that the deceased was left with no other option except to commit suicide. It was also held that a word uttered

in a fit of anger and emotion without intending the consequences to actually follow cannot be said to be instigation.

22. It could certainly not be said that the appellant by his acts created circumstances which left the deceased with no other option except to commit suicide. Viewed from the armchair of the appellant, the exchanges with the deceased, albeit heated, are not with intent to leave the deceased with no other option but to commit suicide. This is the conclusion we draw taking a realistic approach, keeping the context and the situation in mind. Strangely, the FIR has also been lodged after a delay of two months and twenty days.

23. This Court has, over the last several decades, repeatedly reiterated the higher threshold, mandated by law for Section 306 IPC (Now Section 108 read with Section 45 of the Nyaya Sanhita, 2023) to be attracted. They however seem to have followed more in the breach. Section 306 IPC appears to be casually and too readily resorted to by the police. While the persons involved in genuine cases where the threshold is met should not be spared, the provision should not be deployed against individuals, only to assuage the immediate feelings of the distraught family of the deceased.

24. The conduct of the proposed accused and the deceased, their interactions and conversations preceding the unfortunate death of the deceased should be approached from a practical point of view and not divorced from day-to-day realities of life. Hyperboles employed in exchanges should not, without anything more, be glorified as an instigation to commit suicide. It is time the investigating agencies are sensitised to the law laid down by this Court under Section 306 so that persons are not subjected to the abuse of process of a totally

untenable prosecution. The trial courts also should exercise great caution and circumspection and should not adopt a play it safe syndrome by mechanically framing charges, even if the investigating agencies in a given case have shown utter disregard for the ingredients of Section 306.

10. The Hon'ble Supreme Court in the case of *M. Mohan v. State* reported (2011) 3 SCC 626 in (2025) 4 SCC 801 has held as under;

44. Abetment involves a mental process of instigating a person or intentionally aiding a person in doing of a thing. Without a positive act on the part of the accused to instigate or aid in committing suicide, conviction cannot be sustained.

45. The intention of the legislature and the ratio of the cases decided by this Court are clear that in order to convict a person under Section 306 IPC there has to be a clear mens rea to commit the offence. It also requires an active act or direct act which led the deceased to commit suicide seeing no option and this act must have been intended to push the deceased into such a position that he/she committed suicide.

11. It is well settled that frivolity in prosecution should always be considered and it is only the element of genuineness that shall have to be considered in the matter of grant of bail and in the event of there being some doubt as to the genuineness of the prosecution, in the normal course of events, the accused is entitled to an order of bail¹. So, in view of such facts, this is a fit case to enlarge

¹ Para 11.4 of *Bhagwan Singh v. Dilip Kumar*, (2023) 13 SCC 549, Para 25 of *Deepak Yadav v. State of U.P.*, (2022) 8 SCC 559, Para 11 of *Mahipal v. Rajesh Kumar*, (2020) 2 SCC 118, Para 15 of *State of Kerala v. Mahesh*, (2021) 14 SCC 86, Para 8 of *Harjit Singh Mahipal v. Rajesh Kumar*, (2020) 2 SCC 118 h v. *Inderpreet Singh*, (2021) 19 SCC 355, Para 18 of *Sushila Aggarwal v. State (NCT of Delhi)*, (2020) 5 SCC 1, Para 10 of *Neeru Yadav v. State of U.P.*, (2016) 15 SCC 422, Para 112 of *Siddharam Satlingappa Mhetre v. State of Maharashtra*, (2011) 1 SCC 694.

the accused on bail. Under such circumstances, the discretionary power under B.N.S.S., 2023 may be exercised in favour of the accused upon imposing conditions.

12. In view of the aforesaid reasons and discussion, this court inclines to grant this application so I hereby pass following order in the interest of justice.

:- Order :-

The application for bail filed by the applicant is hereby allowed.

The applicant is hereby ordered to be released on bail on execution of personal bond of Rs. 10,000/- (Rupees Ten Thousand Only) and one surety of like amount and subject to following conditions;

1. The accused shall not commit similar offence while on bail.
2. The accused shall submit an Affidavit regarding his present and permanent residential address along with running mobile number.
3. The accused shall deposit his passport into the Court, if he possess and if, he does not possess passport, then he shall submit an affidavit regarding same.
4. He shall not leave the territory of India without prior permission of this court.
5. The accused shall appear before the court without fault whenever they are summoned by the court failure of which shall be deemed to have forfeited their personal bond and surety bond.

6. The bail of the accused shall stand cancelled if any of the above condition(s) is violated by the accused.

Date : 13.03.2026 [**Amitkumar Narendrabhai Dave**]

Place: Surat

8th Additional Sessions Judge,
Surat

UIC No.GJ00807.